

MEMO# 35513

November 27, 2023

SEC Stays Enhanced Share Repurchase Disclosure Requirements

[35513]

November 27, 2023

TO: ICI Members

Closed-End Investment Company Committee

Disclosure Working Group

SEC Rules Committee SUBJECTS: Closed-End Funds

Compliance

Disclosure RE: SEC Stays Enhanced Share Repurchase Disclosure Requirements

Last week, the Securities and Exchange Commission stayed amendments that will require enhanced disclosure when an issuer repurchases its own equity securities ("Share Repurchase Rule").[\[1\]](#) The Commission stayed the amendments in light of a decision from the U.S. Court of Appeals for the Fifth Circuit granting a petitioners' challenge to the Share Repurchase Rule and remanding it to the Commission to "correct the defects" the court identified by November 30, 2023.[\[2\]](#) In particular, the Fifth Circuit found that the SEC acted arbitrarily and capriciously, in violation of the Administrative Procedure Act, when it failed to respond to petitioners' comments and failed to conduct a proper cost-benefit analysis.[\[3\]](#)

The Share Repurchase Rule will require an issuer, including exchange-traded closed-end funds registered under the Investment Company Act of 1940 ("listed closed-end funds") and business development companies, to:

- file daily repurchase data either semi-annually (for listed closed-end funds) or quarterly (for BDCs);
- check a box indicating whether certain directors or officers traded in shares of the equity securities shortly before or after the public announcement of the repurchase plan or program;
- provide additional detail regarding the structure of its repurchase program and its share repurchases; and
- for operating company issuers and BDCs, add new quarterly disclosure in certain periodic reports related to an issuer's adoption and termination of certain trading arrangements.[\[4\]](#)

The Share Repurchase Rule would have required listed closed-end funds to comply with the amendments beginning with their semi-annual reports covering the first six-month period

that begins on or after January 1, 2024. The Rule would have required BDCs to comply with the amendments beginning with their periodic reports covering the first full fiscal quarter that begins on or after October 1, 2023.

The Share Repurchase Rule now is stayed indefinitely, pending further Commission action.

Kenneth Fang
Associate General Counsel

Notes

[1] See Announcement Regarding Share Repurchase Disclosure Modernization Rule, available at https://www.sec.gov/corpfin/announcement/announcement-repurchase-disclosure-modernization-112223?utm_medium=email&utm_source=govdelivery.

[2] See Chamber of Com. of the USA v. SEC, No. 23-60255 (5th Cir.).

[3] See id at 26.

[4] See Share Repurchase Disclosure Modernization, Securities Exchange Act Rel. No. 97424 (May 3, 2023), available at <https://www.sec.gov/rules/proposed/2021/34-93783.pdf>. References to an issuer repurchase include purchases by affiliates of the issuer and purchases by any person acting on behalf of the issuer or an affiliated purchaser. An "affiliated purchaser" is: (i) a person acting, directly or indirectly, in concert with the issuer for the purpose of acquiring the issuer's securities; or (ii) an affiliate who, directly or indirectly, controls the issuer's purchases of such securities, whose purchases are controlled by the issuer, or whose purchasers are under common control with those of the issuer. See Rule 10b-18(a)(3) under the Securities Exchange Act of 1934. The amendments also will require issuers to furnish the disclosure in a structured, machine-readable data language, using Inline eXtensible Business Reporting Language or XBRL, to make the information readily available for analysis. For a summary of the Share Repurchase Rule, see ICI Memorandum No. 35286 (May 8, 2023), available at <https://www.ici.org/memo35286>.